

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Empowering Consumers to Avoid Bill Shock

Consumer Information and Disclosure

CG Docket No. 10-207

CG Docket No. 09-158

**COMMENTS OF
NEW ENGLAND CONFERENCE OF
PUBLIC UTILITIES COMMISSIONERS**

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I. INTRODUCTION

The New England Conference of Public Utilities Commissioners (“NECPUC”)¹ hereby files comments in response to the *Bill Shock NPRM* issued by the Federal Communications Commission (“FCC” or “Commission”) on October 14, 2010, in the above-referenced proceedings.² Through the NPRM, the Commission seeks comment on baseline mobile wireless consumer protection rules intended to help consumers avoid unexpected roaming and overage charges, or “bill shock.”³ In particular, the Commission seeks comment on proposed rules requiring mobile service providers to provide notification alerts to their subscribers when the subscribers: (1) are approaching an allotted limit for voice, text, and data usage; (2) have reached any allotted limit(s) and have begun to incur overage charges; or (3) “will incur international or other roaming charges ... not covered by” the subscriber’s monthly plan.⁴ The Commission inquires as to the types of wireless services and providers to which the proposed rules should be applicable.⁵ The Commission also seeks comment on a proposed rule requiring mobile service providers to make “clear, conspicuous, and ongoing disclosure of any tools or services they offer” that allow subscribers to limit or monitor their usage.⁶

¹ NECPUC is a non-profit corporation comprising the utility regulatory bodies of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont. Every New England utility commissioner is a director of NECPUC for the duration of his or her tenure. NECPUC’s presidency rotates among the six states on an annual basis. NECPUC provides regional regulatory assistance on matters of common concern to the six New England states. NECPUC has no independent regulatory authority. It addresses issues challenging the electricity, gas, telecommunications and water industries. See NECPUC Website, available at: www.necpuc.org (last viewed Jan. 7, 2011).

² See *Empowering Consumers to Avoid Bill Shock; Consumer Information and Disclosure*, CG Docket Nos. 10-207 and 09-158, Notice of Proposed Rulemaking, FCC 10-180 (rel. Oct. 14, 2010) (“*Bill Shock NPRM*”).

³ *Bill Shock NPRM* at ¶¶ 1, 14.

⁴ *Id.* at ¶¶ 20-23 and Appendix A. Appendix A lists the specific proposed rules for public comment.

⁵ *Id.* at ¶¶ 1, 26 and Appendix A.

⁶ *Id.* at ¶ 24 and Appendix A.

The Commission’s proposed bill shock rules derive from a record, including data and comments, previously developed and/or received by the Commission.⁷ First, on August 28, 2009, the Commission released a Notice of Inquiry to refresh the record regarding its Truth-in-Billing rules and other consumer information issues.⁸ As a basis for its inquiries, the Commission pointed to the introduction of new categories of services available to consumers and advances in technology, and it extended its inquiries beyond billing format.⁹ Second, on May 11, 2010, the Commission’s Consumer & Governmental Affairs Bureau released a Public Notice seeking comment “on the feasibility of instituting usage alerts and cut-off mechanisms similar to those required under the European Union (EU) regulations” enacted to address roaming issues within the EU.¹⁰ This *Bill Shock PN* was shortly followed by the Commission’s release of a *Bill Shock Survey*, which indicated that 30 million Americans, or one in six mobile users, have experienced bill shock.¹¹ The Commission indicates that the record developed in response to the *Consumer Information NOI* and the *Bill Shock PN*, as well as the *Bill Shock Survey* results, shows that “consumers face significant challenges in monitoring mobile usage and protecting themselves from substantial roaming charges or overage charges for exceeding their monthly

⁷ *Id.* at ¶ 2.

⁸ See *Consumer Information and Disclosure; Truth-in-Billing and Billing Format; IP-Enabled Services*, CG Docket No. 09-158; CC Docket No. 98-170; WC Docket No. 04-36, Notice of Inquiry, FCC 09-68, at ¶¶ 1-7 (rel. Aug. 28, 2009) (“*Consumer Information NOI*”). See also *Bill Shock NPRM* at ¶¶ 6-7.

⁹ See *Consumer Information NOI* at ¶¶ 2-4.

¹⁰ *Bill Shock NPRM* at ¶ 9. See also *Comment Sought on Measures Designed to Assist U.S. Wireless Consumers to Avoid “Bill Shock,”* CG Docket No. 09-158, Public Notice, DA 10-803, at 2 (rel. May 11, 2010) (“*Bill Shock PN*”); Regulation (European Communities) No. 544/2009 of the European Parliament and of the Council of 18 June 2009, amending Regulation (EC) No. 717/2007 on roaming on public mobile telephone networks with the Community and Directive 2002/11/EC on a common regulatory framework for electronic communications networks and services, Arts. 6 and 6A (“EU Regulation”).

¹¹ See *Bill Shock NPRM* at ¶ 11. See also Commission News Release, “FCC Survey Confirms Consumers Experience Mobile Bill Shock and Confusion about Early Termination Fees,” at 1 (rel. May 26, 2010); Commission Release, “Americans’ perspectives on early termination fees and bill shock – Summary of Findings,” John Horrigan and Ellen Satterwhite, at 1 (rel. May 26, 2010) (“*Bill Shock Survey*”).

allotments of voice minutes, text and data.”¹² The Commission specifies further that the voluntary protections against bill shock currently offered by providers “vary widely” and “have proven insufficient” and notes that the CTIA Consumer Code, adopted by many wireless carriers, fails to require usage alerts or ways for consumers to set usage limits.¹³

NECPUC supports the Commission’s long-awaited efforts to mandate additional wireless consumer protections and welcomes this opportunity to comment. In particular, NECPUC supports the Commission’s proposed rules and believes that they are an important first step in broader wireless consumer protections. Further, NECPUC urges the Commission to refine its proposed rules and adopt certain additional requirements modeled after the EU usage alert regulations. In addition, NECPUC recommends that the Commission ensure regulatory parity and predictability by mandating that usage alerts and disclosures be applicable to all mobile communications services provided by all mobile service providers. NECPUC believes that a transition period for mobile service providers to comply with the new requirements would be reasonable. Finally, NECPUC further recommends that the Commission: (1) should clearly specify that its regulations would not preempt states’ consumer protection authority or their ability to institute new protections or regulations for carriers operating in their states; and (2) should ensure federal-state collaboration for broader wireless consumer protection reform.¹⁴

¹² *Bill Shock NPRM* at ¶ 2. The Commission also points to a Government Accountability Office (“GAO”) finding that at least 34 percent of wireless subscribers had experienced unexpected charges on their bills. *Bill Shock NPRM* at ¶¶ 2, 8, *citing* GAO Report to Congressional Requesters, “FCC Needs to Improve Oversight of Wireless Phone Service,” GAO-10-34, at 11 (rel. Nov. 2009) (“*GAO Report*”). The Commission notes that the GAO does not distinguish between the underlying causes of the unexpected charges reported. *See Bill Shock NPRM* at ¶ 2, n.16 and ¶ 8, n.35.

¹³ *Bill Shock NPRM* at ¶¶ 2, 13.

¹⁴ We note that silence on any particular issue should not be construed as rejection or support of that issue.

II. DISCUSSION

A. Standardized bill shock rules are an important first step towards broader wireless consumer protection regulations.

The Commission describes bill shock as “sudden, unexpected increases in [mobile consumers’] monthly bills that are not caused by intentional changes in their service plans.”¹⁵

The Commission recognizes that consumer bill shock may result from any number of reasons, including broader disclosure issues, but has focused on bill shock that arises due to unexpected bill increases resulting from roaming fees or fees associated with allotted usage overage.¹⁶ The Commission indicates that it intends to address broader disclosure issues at a later date.¹⁷

NECPUC believes that bill shock is frequently indicative of the need for broader wireless consumer protection regulations. These broader regulations should address such issues as early termination fees (“ETFs”), billing practices and disclosures, and point-of-sale disclosures.¹⁸ We note the Commission’s stated intent to address broader disclosure issues at a later date and recognize that the instant proposed regulations are a logical and targeted fix that address discrete

¹⁵ *Bill Shock NPRM* at ¶ 1.

¹⁶ *Id.* at ¶ 1, n.4 (noting that bill shock may also result from “[a consumer’s] confusion about the underlying terms and conditions of the service plan”). *See also* FCC Consumer and Governmental Affairs Bureau White Paper on Bill Shock, at 2-3 (Oct. 13, 2010).

¹⁷ *Bill Shock NPRM* at ¶ 1, n.4 and ¶ 2, n.6.

¹⁸ *See also* A National Association of Regulatory Utility Commissioners’ Ad Hoc Committee on National Wireless Consumer Protection Standards, *Priority Federal Standards Survey*, at 8-11 (rel. June 2009) (noting that survey responses ranked ETFs, billing practices, and point-of-sale disclosures as top priorities for national standards), *available at*: [http://www.naruc.org/Publications/09%200618%20NARUC Wireless Survey Rept%20fin1.pdf](http://www.naruc.org/Publications/09%200618%20NARUC%20Wireless%20Survey%20Rept%20fin1.pdf) (last viewed Dec. 29, 2010) (“NARUC Wireless Standards Survey”). We note that wireless industry practices have been subject to scrutiny for many years. *See, e.g.*, Texas Attorney General Press Release, “Attorney General Abbott, 31 States Reach \$5 Million Settlement with Top Wireless Companies Over Deceptive Practices – Cingular, Sprint PCS, Verizon take wide-ranging steps to resolve problems,” (rel. Jul. 21, 2004), *available at*: <https://www.oag.state.tx.us/oagNews/release.php?id=533> (providing links to the three wireless settlements, which address, in part, advertising, point-of-sale, and billing disclosures) (last viewed Dec. 29, 2010).

issues: unexpected overage and roaming charges incurred by consumers.¹⁹ As such, we affirm that standardized bill shock rules are an important first step towards those protections and urge the Commission to address the broader issues in the near future.

B. The Commission should mandate certain rules similar to the EU usage alert regulations.

Although the Commission's proposed rules are a good first step, NECPUC believes that they can be further refined in a manner that ensures a greater benefit to consumers without unduly burdening mobile providers. In particular, we affirm previous comments made in this proceeding and recommend that the Commission mandate certain rules similar to the European Union ("EU") usage alert regulations.²⁰ As the Commission itself notes, "no known technological limitation [exists] on record that would prohibit mobile providers from implementing usage alerts" comparable to those required in the EU.²¹ In addition, the nation's four largest wireless carriers, as well as many smaller ones, have already implemented some variation of consumer usage alerts, "albeit in an inconsistent manner."²² As such, the EU usage alert regulations offer a good base template for Commission regulations, and the Commission

¹⁹ We also recognize that many providers have conducted voluntary efforts to help prevent bill shock but agree with the Commission that these methods vary widely and have proven insufficient to adequately protect consumers. See *Bill Shock NPRM* at ¶ 2.

²⁰ See, e.g., Comments of the Massachusetts Attorney General and the MDTC, CG Docket No. 09-158, at 10 ("Massachusetts Comments") (noting that the principles behind the EU regulations "are common-sense"); Consumer Action and the National Consumers League Comments, CG Docket No. 09-158, at 1 (filed Jul. 6, 2010) ("Consumer Action Comments") (urging the Commission to adopt regulations similar to those in the EU); Utility Consumers' Action Network Comments, CG Docket No. 09-158, at 2 (filed Jul. 6, 2010) ("UCAN Comments") (supporting regulations such as those enacted by the EU but not endorsing every element of them).

²¹ *Bill Shock NPRM* at ¶ 18 (citations omitted). In the *Bill Shock PN*, the Commission specifically sought comment:

on the feasibility of instituting usage alerts [and cut-off mechanisms] similar to those required under the EU regulations that would provide wireless voice, text, and data consumers in the United States a way to monitor, on a real-time bases, their usage of a wireless communications service, as well as the various charges they may incur in connection with such usage.

Id. at ¶ 18. See generally *Bill Shock PN*.

²² *Bill Shock NPRM* at ¶ 18 (citations omitted).

should adopt certain elements of those regulations. Consumer group commenters have previously advocated for several of the following measures.

1. **Alerts and requisite disclosure information should be provided free of charge.**²³

The Commission should clearly specify that all mandatory usage alerts and requisite disclosure information are to be provided free of charge.²⁴ Indeed, several carriers already offer some variation of “free” alerts, although there is little consistency between their approaches.²⁵ As a corollary, the Commission should also ensure that mandatory alerts and disclosures do not count towards usage limits.²⁶

2. **Consumers should be provided with the ability to opt out of automatic usage alerts.**²⁷

The Commission inquires as to whether consumers should be permitted to opt out of mandatory usage alerts.²⁸ NECPUC believes that an opt-out mechanism should be available to

²³ See EU Regulation, Art. 6, §§ 1 and 2, and Art. 6a, § 2 (for mobile voice, text, and data, requiring that roaming alerts be free-of-charge and mandating customers’ rights to request and receive detailed pricing information about applicable roaming charges be free-of-charge).

²⁴ See, e.g., Comments of the Center for Media Justice *et. al.*, CG Docket No. 09-158, at 7-10 (filed Jul. 6, 2010) (recommending automatic and free message alerts) (“Media Comments”); UCAN Comments at 13 (urging “no-cost” alerts).

²⁵ See, e.g., Comments of CTIA-The Wireless Association, CG Docket No. 09-158, at 5 (filed Jul. 6, 2010) (noting U.S. Cellular’s free “Overage Protection” program, which sends text message usage alerts to customers enrolled in the program) (“CTIA Comments”); Comments of T-Mobile USA, Inc., CG Docket No. 09-158, at 4-5 (filed Jul. 6, 2010) (indicating that it provides “free text alerts to customers when they are close to reaching or have reached their Whenever Minutes® bucket limit”) (“T-Mobile Comments”); Comments of AT&T, Inc., CG Docket No. 09-158, at 2 (filed Jul. 6, 2010) (stating that it provides its smartphone data plan customers “courtesy alerts when they reach 65% and 90% of their data plan’s limit”) (“AT&T Comments”).

²⁶ See, e.g., UCAN Comments at 13 (urging “no-cost” alerts).

²⁷ See, e.g., EU Regulation, Art. 6, § 1 (requiring automatic roaming alerts “except when the customer has notified his home provider that he does not require this service”).

²⁸ See *Bill Shock NPRM* at ¶ 21.

consumers.²⁹ Further, consumers should be permitted to opt back in to automatic alerts at any time.³⁰ Both the opt-in and opt-out options should be free of charge.³¹

3. **Alerts and data disclosures should be provided in real-time.**³²

In order for mandatory alerts and data disclosures to be truly effective, then they should be provided to consumers in real-time.³³ It is commonsense to conclude that if there is a longer lag time between real-time usage and mandatory alerts and disclosures, then a higher probability exists for consumers to exceed their allotted usage. If consumers exceed their allotted usage, then they will continue to be prone to bill shock – the very same issue that the Commission is trying to rectify. Therefore, it would be counterproductive for the Commission *not* to require that mandatory alerts and data disclosures be provided in real-time.

If the Commission finds that technical limitations exist which would impede providers' ability to provide real-time notifications, then the Commission should consider alternative

²⁹ See, e.g., T-Mobile Customer Support page, "Even More Plus Overage Alerts," at Note (inviting customers to contact customer service if they "would like to opt out of receiving Overage Alerts or if you want to start receiving them again after opting out"), available at: <http://support.t-mobile.com/doc/tm24032.xml?related=y&Referring%20Related%20DocID%20List%20Index=4&navtypeid=6&pagetypeid=7&prevPageIndex=1> (last viewed Dec. 29, 2010); Consumer Cellular Press Release, "Consumer Cellular Offers Complimentary Mobile Usage Alerts – Only wireless provider to offer alerts without customer opt-in requirement; Free service notifies customers when near monthly mobile plan allotment; Allows for retroactive changes," (rel. Apr. 6, 2010) (specifying that customers may "opt-out of this service at any time"), available at: <http://www.consumercellular.com/About/PressRelease/50> (last viewed Dec. 29, 2010). See also EU Regulation, Art. 6, § 1 and Art. 6A, § 2.

³⁰ See EU Regulation, Art. 6, § 1, and Art. 6A, § 2.

³¹ See EU Regulation, Art. 6, § 1, and Art. 6A, § 2.

³² See, e.g., EU Regulation, Art. 6, § 1 (requiring that automatic roaming alerts be provided to consumers "without undue delay").

³³ See, e.g., Reply Comments of Consumer Action and the National Consumers League, CG Docket No. 09-158, at 3 (filed Jul. 19, 2010) (arguing that "a major cause of 'bill shock' is not a lack of cost information but rather a failure to present information in a timely and useful manner") ("Consumer Action Reply Comments"); Massachusetts Comments, at 10 (urging real-time usage alerts); Acision Comments, CG Docket No. 09-158, at 2 (filed Jul. 6, 2010) (noting that "in order to provide transparency to the consumer, real-time usage limits, notifications and cut-offs are the best solution [for consumer awareness]") ("Acision Comments"); Comments of Ericsson, Inc., CG Docket No. 09-158, at 4 (filed Jul. 6, 2010) (specifying that some lag time typically exists "between the time a call is placed or a text message is sent and when the [carrier's] billing database is updated") ("Ericsson Comments").

approaches.³⁴ For instance, a usage time-stamp may be appropriate, whereby the mandatory alert and/or data disclosure includes real-time usage “as of” a specific time period. The Commission should couple such an approach with a requirement that limits applicable “as of” lag times in order to preserve the usefulness of the notice.

4. Consumers should be provided an alert when they are at 80% of their usage allotment.³⁵

The Commission points to the EU’s 80% threshold requirement and inquires as to whether a single notification at the 80% usage mark is “sufficient to provide consumers with reasonable notice” or whether additional notifications should be sent at 90% or 95% usage.³⁶ NECPUC responds that an 80% threshold appears to be appropriate, as it will provide consumers with the opportunity to adjust their consumption habits before reaching their allotted limits.³⁷ Finally, a single notification to the consumer before reaching his or her usage limit seems sufficient to us at this time, although, if problems persist, the issue may always be revisited by the Commission.³⁸

³⁴ Nothing in the existing record indicates that such technical limitations exist. *See, e.g.*, Ericsson Comments at 6 (noting that “data usage notification requirements may be problematic for carriers” but indicating that it can “offer solutions ... that can generate real-time alerts”); Acision Comments at 1 (indicating that it “sees no major technological or other differences that would prevent wireless providers in the US from implementing usage alerts and cut-off mechanisms similar to those required in the EU ... [and] as long as real-time access to the network elements can be achieved, controls and usage alerts will be possible”).

³⁵ *See, e.g.*, EU Regulation, Art. 6A, § 3 (requiring notice “when data roaming services have reached 80% of the agreed financial or volume limit”).

³⁶ *Bill Shock NPRM* at ¶ 20.

³⁷ *See UCAN Comments* at 13 (specifying that an “80% threshold is desirable because it allows the customer to still have time to use the phone or device”).

³⁸ *See Bill Shock NPRM* at ¶ 20 (noting the “utility of providing multiple usage alerts to the consumer against the potential burdens to the wireless providers”).

5. ***Contrary to EU requirements, specific pricing information should not be included in any automatic alerts at this time.***

The current EU regulations require wireless carriers to provide baseline pricing information in mandated roaming alerts.³⁹ While we recognize the inherent consumer benefits to such an approach, we do not feel that the Commission should impose this requirement at this time. In particular, if the Commission’s proposed rule requiring mobile providers to make “clear, conspicuous and ongoing disclosure of any tools they offer which allow subscribers to either limit usage or monitor usage history, including any applicable charges for those services” is adopted, then this rule should, in theory, provide consumers adequate access to their pricing information.⁴⁰ However, the Commission should ensure that any mandatory alerts provide some form of clear and free direction through their mobile devices on how consumers may access the pricing information applicable to them. While several carriers have already adopted variations of this approach, their service offerings appear to be directed more towards usage numbers as opposed to providing direction as to where to find applicable pricing information.⁴¹ Further, as the Center for Media Justice, *et. al.*, previously pointed out, many of these approaches are

³⁹ See, e.g., EU Regulation, Art. 6, § 1 (requiring the roaming notice to include “basic personalized pricing information”).

⁴⁰ *Bill Shock NPRM* at ¶ 24 and Appendix A.

⁴¹ Compare AT&T Comments at 5 (indicating that it offers many free services for customers to track their usage and billing, many of which “are accessible from the wireless phone or device itself”), and Comments of Verizon Wireless, CG Docket No. 09-158, at 6 (filed Jul. 6, 2010) (specifying that its customers “may obtain up-to-date information regarding their voice, messaging, and data usage directly on their handsets”) (“Verizon Comments”), and Comments of Sprint Nextel Corp., CG Docket No. 09-158, at 5 (filed Jul. 6, 2010) (stating that its customers may “[a]t any time ... dial *4 from their handsets to get an automated tally of the minutes, text messages, and data used to date”) (“Sprint Comments”), and T-Mobile Comments at 5, with Consumer Action Comments at 3 (pointing out that “[t]here of the four major U.S. wireless carriers charge a monthly fee to enroll in their usage management features”).

“problematic because many consumers may have no idea that such alerts and information exist, or some may not be able to pay another fee just to receive a usage alert.”⁴²

C. NECPUC addresses three additional issues raised by the Commission.

The Commission seeks comment as to: (1) whether the rules it adopts should apply “to all communications services provided by mobile wireless providers, including voice, text, and data services[;]”⁴³ (2) whether any mobile wireless providers should be exempt, including prepaid providers (traditional, pay-as-you-go and/or unlimited prepaid) and smaller, regional, and/or rural providers;⁴⁴ and (3) appropriate implementation schedules.⁴⁵ We respond that: (1) the rules should apply to all communications services provided by mobile wireless providers; (2) no prepaid providers should be exempt; and (3) timelines and a process for limited waiver are reasonable.

1. The rules should apply to all communications services provided by mobile wireless providers.

The Commission should ensure regulatory parity and predictability by requiring that alerts be mandated for all services provided by mobile wireless providers, including voice, text, and data. Such uniform applicability will ensure ongoing and continued protections against consumer bill shock as the mobile marketplace transitions to a more data-centric market.⁴⁶ In addition, uniform application of these rules to all mobile communications services would more

⁴² Media Comments at 6.

⁴³ *Bill Shock NPRM* at ¶ 26.

⁴⁴ *Id.* at ¶ 25.

⁴⁵ *Id.* at ¶ 23.

⁴⁶ See GAO Report to Congressional Requesters, “Enhanced Data Collection Could Help FCC Better Monitor Competition in the Wireless Industry,” GAO-10-779, at 16 (rel. Jul. 2010). See also Pew Internet & American Life Project, “Mobile Access 2010,” by Aaron Smith, at 2 (Jul. 7, 2010) (showing increase in mobile non-voice data applications), available at: http://pewinternet.org/~media/Files/Reports/2010/PIP_Mobile_Access_2010.pdf (last viewed Dec. 16, 2010).

appropriately correspond to the Commission’s competition policies involving the mobile services marketplace.⁴⁷

2. No prepaid providers should be exempt.

The Commission should also ensure regulatory parity and predictability by not exempting certain classes of mobile providers from the rules.⁴⁸ Although several mobile providers have indicated that bill shock rules for prepaid providers would be unnecessary, we posit that variation between services provided under different plans is sufficient to warrant a blanket application of most of the Commission’s bill shock rules. In addition, we note that unlimited plans (both post- and pre-paid) would not be affected by the usage alert rules. Therefore, concerns about rules applying to unlimited plans or services are unfounded. However, any capped or metered mobile services, including those bundled with unlimited plans, would require tracking. Further, prepaid consumers would still benefit from usage and roaming alerts, and requiring baseline alerts would help to minimize any future consumer confusion – as with other mobile service consumers, prepaid consumers may suffer bill shock if they utilize their allotted time or data faster than predicted or if they are assessed roaming charges. For a low-income consumer, the strain of payment may be felt more if they cannot afford to add credit to their wireless device.⁴⁹

⁴⁷ See, e.g., *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. 09-66 (Terminated), Fourteenth Report, FCC 10-81, at ¶ 282 (rel. May 20, 2010) (indicating that the mobile services marketplace has evolved and, as a result, in 2008, the Commission revised its competition policies to include both traditional mobile telephony and mobile broadband services as a combined product market in its competitive analysis).

⁴⁸ See, e.g., Consumer Action Reply Comments at 4 (pointing out that “[a] floor of protections ensures that subscribers can expect a minimum amount of “bill shock” protection regardless of carrier or plan”).

⁴⁹ When extending the Universal Service Fund Lifeline program to include wireless carriers, the Commission recognized that “[t]he prepaid feature may be an attractive alternative for such [low-income] consumers who need the mobility, security, and convenience of a wireless phone but who are concerned about usage charges or long-term contracts.” *Federal-State Joint Board on Universal Service; Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Order, FCC 05-165, at ¶ 15 (rel. Sept. 8, 2005). Further, certain data indicates that low-income consumers who order wireless phone service

3. Timelines and a process for limited waiver are reasonable.

The Commission specifies that “mobile providers may need to revise their existing systems to comply” with mandatory requirements and inquires as to “the length of time that would be required” for providers to implement any changes.⁵⁰ The Commission also inquires whether “varying implementation schedules” would be appropriate for larger versus smaller, regional and/or rural providers.⁵¹

While we concur that some form of transition period would be reasonable, we do not have sufficient data to recommend a specific timeline. However, we recognize that carriers may currently have technical or cost limitations to implement mandatory alert and disclosure requirements. As such, we urge the Commission to establish a uniform timeline for all mobile service providers but, in accordance with Commission rules, permit a limited waiver for any carrier unable to comply.⁵² In particular, the waivers should neither be granted without proper support, nor should they be indefinite.

D. NECPUC makes additional recommendations.

NECPUC urges the Commission to address certain issues omitted from the *Bill Shock NPRM*: (1) state consumer protection oversight authority; and (2) a federal-state consumer outreach partnership.

typically subscribe to prepaid services. *See, e.g.*, GAO Report to Congressional Requesters, “Enhanced Data Collection Could Help FCC Better Monitor Competition in the Wireless Industry,” GAO-10-779, at 15 (rel. Jul. 2010), *available at*: <http://www.gao.gov/new.items/d10779.pdf> (last viewed Dec. 30, 2010); New Millennium Research Council, “Cell Phones Provide Significant Economic Gains for Low-Income American Households – A Review of Literature and Data from Two New Surveys,” by Nicholas P. Sullivan, at 4 (Apr. 2008), *available at*: http://www.newmillenniumresearch.org/archive/Sullivan_Report_032608.pdf (last viewed Dec. 30, 2010).

⁵⁰ *Bill Shock NPRM* at ¶ 23.

⁵¹ *Id.*

⁵² The Commission may waive any provision of its rules for good cause shown. *See* 47 C.F.R. § 1.3.

1. **The Commission needs to clearly specify that these regulations would not preempt states' consumer protection authority or their ability to institute new protections or regulations for carriers operating in their states.**

Each state has its own level of consumer protections for entities operating within its borders.⁵³ While the proposed bill shock rules would become federal regulation, we request that the Commission make an affirmative statement that these regulations would not preempt states' consumer protection authority or their ability to institute new protections or regulations for carriers operating in their states, except to the extent that a state sought to establish standards related to the same subject matter that would interfere with regulations promulgated by the Commission. Such a recommendation is consistent with existing federal law and previous recommendations.⁵⁴

2. **The Commission should ensure federal-state collaboration for broader wireless consumer protection reform.**

NECPUC commends the Commission's recent efforts and stated intent to address broader wireless consumer protection issues, as well as the Commission's efforts addressing bill shock.⁵⁵ However, as the Commission moves forward with broader reform, we encourage it to collaborate with states in order to better inform federal wireless consumer protection policy.⁵⁶ Further, we

⁵³ See, e.g., MASS. GEN. LAWS ch. 93A (entitled "Regulation of Business Practices for Consumers Protection").

⁵⁴ See NARUC Wireless Standards Survey at 12-13; GAO Report at 7; MDTC Comments, *Consumer Information and Disclosure; Truth-in-Billing and Billing Format; IP-Enabled Services*, CG Docket No. 09-158, CC Docket No. 98-170, and WC Docket No. 04-36, at 15-17 (filed Oct. 13, 2009).

⁵⁵ See *Bill Shock NPRM* at ¶ 1, n.4 and ¶ 2, n.6; FCC News Release, "FCC Bureau Launches Initiative to Help Consumers Avoid "Bill Shock" – Action is one of the first by new FCC Consumer Task Force" (rel. May 11, 2010).

⁵⁶ Both the GAO and NARUC have made similar recommendations. See GAO Report at 40 (offering recommendations for the Commission to improve its partnership with state agencies that oversee wireless phone service); NARUC Resolution, "Resolution Urging the Federal Communications Commission to Use Its Authority to Protect Consumers from Mobile Device Bill Shock," at 2 (adopted Jul. 21, 2010) (urging the Commission "to work with State commissions, consumer representatives, and industry to implement measures" to address wireless

urge the Commission to work with states to promote wireless consumer education efforts that address issues such as bill shock. NECPUC and its state members stand ready and willing to work with the Commission on wireless consumer protection issues.

III. CONCLUSION

Thank you for this opportunity to comment.

Respectfully submitted,

/s/

William M. Nugent, Executive Director
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consumer bill shock), *available at*:

<http://www.naruc.org/Resolutions/Resolution%20Urging%20FCC%20to%20Protect%20Consumers%20from%20Bill%20Shock1.pdf> (last viewed Dec. 30, 2010).